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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,352	04/29/2004	George W. Brewer	BL-002	3351

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RAUSCHENBACH PATENT LAW GROUP, LLC  
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BEDFORD, MA 01730

EXAMINER
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HWANG, VICTOR KENNY

ART UNIT	PAPER NUMBER
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3764

MAIL DATE	DELIVERY MODE
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07/06/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/709,352

Applicant(s)

BREWER ET AL.

Examiner

Victor K. Hwang

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 29 April 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119


- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 5/10/04 & 5/13/04.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

  
JEROME DONNELLY  
PRIMARY EXAMINER

## DETAILED ACTION

### *Drawings*

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “molded protrusion” of claim 3; the insert comprising a sphere, a capsule, or a block of claim 16; the insert comprising a spherical insert, a rectangular insert, a triangular insert, a trapezoidal insert, a hexagonal insert, an octagonal insert, or an ellipsoidal insert of claim 19 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

2. Claims 16 and 19 are objected to because of the following informalities: the recitation "selected from the group comprising" renders the claims in the form of an improper Markush claim and presumably should be changed to recite --selected from the group consisting of--. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 5, 8, 9, 11, 13-15, 18-21, 25, 26, 28-30, 32 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by *Barde et al.* (FR 2,628,330). *Barde* discloses a climbing structure and method for securing a climbing hold to a climbing surface comprising an insert 5; a climbing hold 1 that defines an opening, the hold having a plurality of recesses 6 spaced a distance "d" from the opening and arranged in a circle "C" around the opening and a rock-like protruding outer surface; and a climbing surface 4 that defines a threaded opening aligned with the opening in the hold so that a threaded member 3 can be inserted through the aligned openings to secure the hold to the surface, the climbing surface also receiving the insert in an opening. The climbing hold can be arranged in a selected orientation on the climbing surface and is prevented from rotating relative to the climbing surface by the engagement of the insert into a selected recess 6 of the hold. The back surface of the climbing hold can be flush with the

climbing surface (Fig. 1) or can be recessed below the climbing surface (Fig. 2). The recesses 6 in the climbing hold and recess in the climbing surface are considered to read upon the limitation of a slot. The threaded member 3 is a threaded bolt with a threaded rod portion. The insert 5, as seen from the drawings, can be described as being circular, cylindrical or staple-like in shape.

5. Claims 1-5, 7-9, 14-17, 19, 21, 22, 24-27, 29-32, 35 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by *Vettori* (US Pat. 6,514,178 B2). *Vettori* discloses a climbing structure and method for securing a climbing hold to a climbing surface comprising climbing hold 5 that defines an opening, the climbing hold having a recess 13 that is offset from the opening and shaped to receive an insert 9b; and a climbing surface 2 that defines an opening 7 that is aligned with the opening in the climbing hold 5 so that a threaded member 8 can be inserted through the aligned openings to secure the climbing hold 5 to the climbing surface 2 and cause the insert 9b to engage the recess 13 in the climbing hold 5. The insert 13 and the threaded member 8 substantially prevent the climbing hold 5 from rotating relative to the climbing surface 2. The climbing surface 2 comprises a recess 12 that is shaped to receive at least a portion of the insert 9b and the insert 9b comprises a permanently mounted molded protrusion formed on the climbing surface 2. The insert 9b, as shown in Figs. 8 and 9, can be considered block or rectangular shaped, and may comprise a plurality of inserts 9b. The recess 13 in the climbing hold 5 is considered to read upon the limitation of a slot and comprises a plurality of recesses 13 to allow the climbing hold 5 to be secured in different positions relative to the climbing surface 2. The threaded member 8 comprises a bolt having a threaded rod section that is threaded into a

threaded insert 10 formed and positioned at least partially within the opening in the climbing surface 2 and a head that rests upon a shoulder in the opening of the climbing hold 5.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 10, 23, 33, 34 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Barde et al.* (FR 2,628,330) in view of *On Top Klettern* (DE 299 12 078 U1). *Barde et al.* has been discussed above, and such discussion is incorporated herein. *Barde et al.* discloses the invention as claimed except for the portion of the insert received by the recess in the climbing surface is threaded in the recess in the climbing surface (claims 6 and 34); the insert comprises a bolt (claim 10); a nut is positioned behind the climbing surface to receive the threaded member inserted through the opening in the climbing hold (claims 23 and 33); and threading at least a portion of the insert into a nut that is positioned behind a recess in the climbing surface to secure the portion of the insert in the recess in the climbing surface (claim 36).

*On Top Klettern* discloses a climbing hold 2 mounted to a climbing surface 1, the climbing hold 2 prevented from rotating by inserts 20 that engage the climbing hold 2 and the climbing surface 1. In Fig. 1, the inserts 20 are secured within the climbing hold 2 and extend from the climbing hold 2 with a threaded end that is engaged by nuts 23 behind the recess 12 in the climbing surface 1. Nuts 23 behind the climbing surface 1 are shown to be effective to

engage threaded rods and therefore would be equivalent to the use of threaded inserts placed in the climbing wall or the wall actually being threaded to receive a threaded rod. It is also well known in the art to use bolts to provide threaded rod ends and therefore it would be obvious to one having ordinary skill in the art that the threaded inserts 20 are bolts having a mushroom head, in order to secure the inserts within the climbing hold.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the inserts of *Barde et al.* as a bolt with a threaded end to engage a threaded recess or a nut behind the climbing surface, in order to secure the insert to the climbing surface as taught by *On Top Kletteren*. It would have been further obvious to one having ordinary skill in the art at the time the invention was made that the threaded member of *Barde et al.* engage a nut behind the climbing surface, since *On Top Kletteren* shows that a nut behind the climbing surface is effective to secure the threaded end of a threaded member.

8. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Barde et al.* (FR 2,628,330). *Barde et al.* has been discussed above, and such discussion is incorporated herein. *Barde et al.* discloses the invention as claimed except for the pin insert comprises a mushroom head. *Barde et al.* discloses the pin having a cylindrical head. It would have been an obvious matter of design choice to provide the insert of *Barde et al.* with a mushroom head, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

### Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

*Strickler et al.* (US Pat. 5,732,954), *Postma et al.* (US Pat. App. Pub. No. 2006/0116244 A1), *Therrat et al.* (FR 2,596,658 A1), *Savigny* (FR 2,627,988 A1), *Hoffmann* (DE 43 01 946 A1), *Savigny* (GB 2,288,129 A), *Eynard* (FR 2,730,644 A1), *Thierry* (FR 2,768,935 A1) and *T-Wall Equip* (DE 20207771 U1) disclose climbing holds and climbing surfaces having features relevant to the claimed invention.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor K. Hwang whose telephone number is (571) 272-4976. The examiner can normally be reached Monday through Friday from 7:30 AM to 4:00 PM Eastern time.

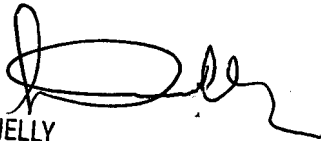
The facsimile number for submitting papers directly to the examiner for informal correspondence is (571) 273-4976. The facsimile number for submitting all formal correspondence is (571) 273-8300.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Sirmons can be reached on (571) 272-4965.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Victor K. Hwang  
June 25, 2007



JEROME DONNELLY  
PRIMARY EXAMINER